

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HANS-UWE BAUMANN, DIETER SEMMEL and VASIL BARBUNOPULOS

Appeal No. 2004-2060
Application No. 09/891,271

HEARD: December 9, 2004

Before FRANKFORT, STAAB, and MCQUADE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 3 and 6 through 11. Claims 4 and 5, the only other claims pending in the application, stand objected to as being dependent upon a rejected base claim and have been indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Appellants' invention (e.g., claim 1) relates to a receiving device for pedals of a motor vehicle comprising a mounting plate (2) on which a clutch pedal (3), a brake pedal (4) and an accelerator pedal (5) are swivellably disposed, wherein the clutch pedal (3) is swivellably held in an insert (12) which forms a preassembled constructional unit with the clutch pedal, which constructional unit can be fastened between projecting legs (10, 11) of the mounting plate (2) and is constructed to be optionally removable therefrom when the vehicle includes an automatic transmission. Appellants' invention also addresses a pedal assembly for a motor vehicle (claim 6) and a method of making a receiving device of the type noted above (claim 9). A copy of representative claims 1, 6 and 9 can be found in the Appendix attached to appellants' brief.

The sole prior art reference relied upon by the examiner in rejecting the appealed claims is:

Counts	3,192,794	Jul. 6, 1965
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Claims 1 through 3 and 6 through 11 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Counts.

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Rather than reiterate the examiner's full commentary regarding the above-noted anticipation rejection and the conflicting viewpoints advanced by the examiner and appellants, we make reference to the final rejection (mailed February 5, 2003) and the examiner's answer (mailed January 27, 2004) for the reasoning in support of the rejection and to appellants' brief (filed November 5, 2003) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, this panel of the Board has given careful consideration to appellants' specification and claims, to the applied prior art Counts patent, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we have reached the determination that the examiner's rejection will not be sustained. Our reasons follow.

In urging that claims 1 through 3 and 6 through 11 are anticipated under 35 U.S.C. § 102(b) based on Counts, the examiner has found, *inter alia*, that Counts discloses

a mounting plate (28) on which an accelerator pedal (110), a brake pedal (78), and a clutch pedal (79) are swivellably disposed, wherein the clutch is swivellably held in an insert (82), which forms a pre-assembled construction unit. The construction unit is fastened between projecting legs (24) and (26) of the mounting plate and is optionally removable (final rejection, page 2).

Like appellants (brief, pages 4-6), it is our opinion, after having reviewed the Counts patent, that no preassembled constructional unit including the clutch pedal, which constructional unit can be fastened between projecting legs of a mounting plate and is constructed to be optionally removable therefrom when the vehicle includes an automatic transmission, is taught or suggested in Counts. Counts expressly notes that the brake and clutch levers (12) and (14) seen in Figure 1 "depend downwardly below the dashboard 16 in a conventional manner" (col. 2, lines 43-44) and that the hand operated control assembly (22) for facilitating operation of the clutch, brake and accelerator pedals of the vehicle by a paraplegic driver having little or no use of his lower limbs is intended to be added onto the vehicle and supported from the undersurface of the dashboard (16) by supports (24, 26) and operatively connected to the control pedals of the vehicle so that the control pedals can be operated by the right hand of a paraplegic driver (col. 1, lines 35-40). A

modified version of the hand-operated control assembly adapted to be used in conjunction with a vehicle having an automatic transmission is shown in Figures 6 and 7 of Counts.

Looking particularly to the clutch (14, 79) seen in the embodiment of Figures 1-4 of Counts, we note that the control assembly (22) includes a hand-operated clutch control lever (86) secured to support shaft (30) adjacent one end thereof, a clutch crank arm (92) secured to a portion of shaft (30) adjacent the opposite end thereof, and a clutch control rod (72) having an upper end secured to crank arm (92) and an inner or lower portion (76) with a bifurcated clevis (82) pivotally secured to the clutch lever (14) adjacent pedal (79). Operation of the clutch portion of the control assembly (22) is set forth in column 4, lines 15+ of Counts.

Given the foregoing, it is clear to us that Counts has no "preassembled constructional unit" of the type defined in appellants' claims 1, 6 and 9 on appeal, and that the examiner's findings that clutch (14, 79) of Counts is swivellably held in an insert (82) which thereby forms such a "preassembled constructional unit," and that the preassembled constructional

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unit with clutch is optionally removable from the vehicle, are in error. Notwithstanding that the clutch pedal (14, 79) and the portion of control apparatus (22) associated therewith in Counts may be individually removable from the vehicle, as the examiner appears to so urge on pages 5 and 6 of the answer, the clutch pedal (14, 79) in Counts is not part of any preassembled constructional unit, which constructional unit can be fastened between projecting legs of a mounting plate and is constructed to be optionally removable therefrom as a unit when the vehicle includes an automatic transmission. Nor do we view the limitations regarding the "preassembled constructional unit" of claims 1, 6 and 9 on appeal as being mere process limitations which, according to the examiner, can be given no patentable weight. For those reasons, we will not sustain the examiner's rejection of independent claims 1, 6 and 9 under 35 U.S.C. § 102(b) based on Counts, or the rejection of dependent claims 2, 3, 7, 8, 10 and 11 under 35 U.S.C. § 102(b). Thus, the decision of the examiner is reversed.

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REVERSED

CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JOHN P. MCQUADE)	
Administrative Patent Judge)	

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